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Counsel for the Litigation Trustee

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC, aka
"Rhodes Homes," et al.,

Reorganized Debtors.¹

EUGENE I. DAVIS, AS TRUSTEE OF THE
LITIGATION TRUST OF THE RHODES
COMPANIES, LLC, et al.,

Plaintiff,

v.

GREENWAY PARTNERS, LLC, FREDERIC
CHIN, AND JAMES COYNE,

Defendants.

CASE NO. BK-09-14814-LBR
(Jointly Administered)

Chapter 11

Adv. No.

ADVERSARY COMPLAINT

¹ The Reorganized Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Heritage Land Company, LLC (2918); The Rhodes Companies, LLC (3060); Rhodes Ranch General Partnership (1760); Tick, LP (0707); Glynda, LP (5569); Chalkline, LP (0281); Batcave, LP (6837); Jackknife, LP (6189); Wallboard, LP (1467); Overflow, LP (9349); Rhodes Ranch Golf and Country Club (9730); Tuscany Acquisitions, LLC (0206); Tuscany Acquisitions II, LLC (8693); Tuscany Acquisitions III, LLC (9777); Tuscany Acquisitions IV, LLC (0509); Parcel 20 LLC (5534); Rhodes Design and Development Corp. (1963); C&J Holdings, Inc. (1315); Rhodes Realty, Inc. (0716); Jarupa LLC (4090); Elkhorn Investments, Inc. (6673); Rhodes Homes Arizona, LLC (7248); Rhodes Arizona Properties, LLC (8738); Tribes Holdings LLC (4347); Six Feathers Holdings, LLC (8451); Elkhorn Partners, A Nevada Limited Partnership (9654); Bravo Inc. (2642); Gung-Ho Concrete, LLC (6966); Geronimo Plumbing, LLC (6897); Apache Framing, LLC (6352); Tuscany Golf Country Club, LLC (7132); Pinnacle Grading, LLC (4838).

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ADVERSARY COMPLAINT TO AVOID AND RECOVER A FRAUDULENT TRANSFER

Plaintiff, Eugene I. Davis, the duly appointed trustee of the Litigation Trust of the Rhodes Companies, LLC (the “Trustee”), pursuant to the *Third Amended Modified Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for The Rhodes Companies, LLC, et al.* (the “Plan”), by and through his undersigned counsel, hereby files this complaint (the “Complaint”). In support of this Complaint, the Trustee respectfully states as follows:

BACKGROUND

1. By its Complaint, the Trustee seeks the recovery of over \$500,000 that was fraudulently transferred to Greenway Partners, LLC (“Greenway”), Mr. Frederick Chin (“Chin”) and/or Mr. James Coyne (“Coyne”) on November 13, 2008 (the “Fraudulent Payment”).

2. On November 7, 2007, James Rhodes (“Rhodes”), former Chief Executive Officer and former sole board member of the Debtors, granted Greenway a mortgage lien for \$500,000 on certain Property (as defined below) owned by Rhodes Ranch (as defined below).

3. On November 13, 2008, Rhodes caused Rhodes Ranch to sell the Property to a third-party, Spirit Underground, LLC (“Spirit”), and used a portion of the proceeds to satisfy the \$500,000 lien that had been previously granted to Greenway.

4. Upon information and belief, neither the mortgage lien nor the payment in satisfaction thereof were granted to Greenway, Chin and/or Coyne in exchange for any consideration to Rhodes Ranch. Instead, both the lien and the accompanying payment were undertaken to defraud Rhodes Ranch of more than \$500,000.

PARTIES

5. The Trustee is the duly appointed trustee of the Litigation Trust of The Rhodes Companies, LLC, *et al.* (the “Litigation Trust”). Pursuant to Article VI of the Litigation Trust, the Trustee has the authority to pursue claims and causes of action transferred to the Trust by the Debtors through the Plan.

6. Rhodes Ranch is a general partnership that is primarily involved in building and selling homes in Nevada and Arizona. On either March 31, 2009 or April 1, 2009 (collectively, the “Petition Date”), Rhodes Ranch, Heritage Land Company, LLC (“Heritage”), Rhodes Design

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1 and Development Corporation (“Rhodes Design”) and Rhodes Companies, LLC (“Rhodes
 2 Companies” and, together with Rhodes Ranch, Heritage, and Rhodes Design, the “Debtors”)
 3 commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the
 4 “Chapter 11 Cases”). On March 12, 2010, this Court entered an order Confirming the Plan which
 5 became effective on April 1, 2010.

6 7. Upon information and belief, Greenway is a Nevada limited liability company with
 7 its principal place of business in Las Vegas, Nevada. Upon information and belief, Greenway was
 8 owned and/or controlled by Chin and Coyne during the periods described in this Complaint. Upon
 9 information and belief, the last known address for Greenway is 3230 Polaris Avenue #11, Las
 10 Vegas, Nevada 89102.

11 8. Upon information and belief, Chin is a resident of the state of Nevada and resides at
 12 322 Karen Avenue #2708, Las Vegas, Nevada 89109. Upon information and belief, Chin served
 13 as the Chief Operating Officer of Rhodes Design, from approximately April 12, 2004 through
 14 March 16, 2007 and earned an annual base salary of \$400,000.

15 9. Upon information and belief, Coyne is a resident the state of Nevada and resides at
 16 36 Brookridge Drive, Henderson, Nevada 89052. Upon information and belief, Coyne served as
 17 the Vice President of Rhodes Design from approximately May 7, 2004 through November 19,
 18 2007 and earned an annual base salary of \$180,000.

19 **JURISDICTION AND VENUE**

20 10. This Court has jurisdiction over the parties and the subject matter of this proceeding
 21 pursuant to 28 U.S.C. §§ 157 and 1334.

22 11. This action is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

23 12. Venue of this action is proper in this district pursuant to 28 U.S.C. § 1409(a).

24 13. The statutory basis for the relief requested in this Complaint is 11 U.S.C. § 548.

25 **FRAUDULENT PAYMENT**

26 14. On November 7, 2007, Rhodes granted a second mortgage lien for \$500,000 (the
 27 “Second Lien”) to Greenway on certain property owned by Rhodes Ranch located at 3525 W.
 28 Hacienda Avenue, Las Vegas, Nevada 89118 (the “Property”). Upon information and belief, the

1 Second Lien was not granted in exchange for reasonably equivalent value or any value at all to
2 Rhodes Ranch or any of the Debtors.

3 15. On November 13, 2008, well after both Chin and Coyne had ceased to be employed
4 by Rhodes Design, Rhodes caused Rhodes Ranch to sell the Property to Spirit, a non-debtor entity
5 that was controlled by Rhodes, for approximately \$1,246,503.65 (the "Sale Price"). Notably, the
6 Sale Price was just enough to pay off both the first mortgage lien granted to City National Bank
7 (the "First Lien") and the Second Lien. Upon information and belief, of the \$1,246,503.65
8 received as a result of the sale, \$627,704.78 was paid to satisfy the First Lien while \$518,604.44
9 was paid to Greenway, Chin and/or Coyne in satisfaction of the Second Lien leaving
10 approximately \$100,000 for Rhodes Ranch.

11 CAUSES OF ACTION

12 Count I

13 Avoidance of Fraudulent Payments Pursuant to 11 U.S.C. § 548

14 (Against All Defendants)

15 16. The Trustee repeats and re-alleges each of the allegations set forth above as if fully
16 set forth herein.

17 17. The Fraudulent Payment was made within two years prior to the Petition Date.

18 18. On November 13, 2008, Rhodes caused Rhodes Ranch to sell the Property to Spirit
19 and used a portion of the proceeds from the sale to pay \$518,604.44 to Greenway, Chin and/or
20 Coyne in satisfaction of the Second Lien.

21 19. The Fraudulent Payment to Greenway, Chin and/or Coyne was not made in
22 exchange for any consideration to the Rhodes Ranch.

23 20. The Fraudulent Payment was made with actual intent to hinder, delay or defraud the
24 Debtors' present and future creditors.

25 21. Alternatively, the Fraudulent Payment was made (a) by Rhodes Ranch without
26 receiving reasonably equivalent value in exchange, (b) outside the ordinary course of business, and
27 (c) for the benefit of Rhodes, an insider or (d) when the Debtors were insolvent.

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Count II

Avoidance of Fraudulent Payments Pursuant to N.R.S. § 112.180

(Against All Defendants)

22. The Trustee repeats and re-alleges each of the allegations set forth above as if fully set forth herein.

23. On November 13, 2008, Rhodes caused Rhodes Ranch to sell the Property to Spirit and used a portion of the proceeds from the sale to pay \$518,604.44 to Greenway, Chin and/or Coyne in satisfaction of the Second Lien.

24. The Fraudulent Payment to Greenway, Chin and/or Coyne was not made in exchange for any consideration to Rhodes Ranch.

25. The Fraudulent Payment was made with actual intent to hinder, delay or defraud the Debtors' present and future creditors.

26. Alternatively, the Fraudulent Payment was made (a) by Rhodes Ranch without receiving reasonably equivalent value in exchange and (b) with the intention to incur, or believing that the Rhodes Ranch would incur, debts beyond its ability to pay as they became due.

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PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, the Trustee respectfully requests the following relief:

- a. That the Fraudulent Payment be avoided and preserved for the benefit of Rhodes Ranch;
- b. That judgment be entered in favor of the Plaintiff and against Defendants, in an amount equal to the Fraudulent Payment, plus interest at the legal rate from the date of the Fraudulent Payment, together with the fees, costs, interest and expenses of this action; and
- c. That Plaintiff be granted such other and further relief as is just, proper and equitable.

Dated this 30th day of March, 2011.

By: /s/ Philip C. Dublin

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